

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

\* \* \*

Brett Jones,

Plaintiff,

v.

William Gittere, et al.,

Defendants.

Case No. 2:24-cv-00171-APG-DJA

**Order**

Before the Court is pro se Plaintiff Brett Jones' motion for leave to file certain exhibits under seal (ECF No. 33), motion to extend discovery (ECF No. 35), motion to compel (ECF No. 36), and Defendants Frank Dreesen, James Dzurenda, William Gittere, Guillermo Hernandez, Kimberly McCoy, Gabriela Najera, Brian Williams, and Julie Williams' motion to stay discovery (ECF No. 39). Because the Court finds that Plaintiff has not demonstrated compelling reasons to file his exhibits under seal, it denies his motion to seal. Because the Court finds that Plaintiff has demonstrated good cause to extend discovery, it grants his motion to extend. Because the Court finds that Plaintiff has not adequately met and conferred prior to bringing his motion to compel, it denies his motion. And because the Court finds that Defendants have not demonstrated that a stay of discovery is appropriate, it denies their motion to stay.

**I. Motion to file exhibits under seal.**

Plaintiff moves to file four exhibits, Exhibits A-D, in support of his reply in support of his motions for preliminary injunction under seal. (ECF No. 33). Plaintiff also filed his motion to seal under seal, but filed a notice of under seal submission on the docket. (ECF No. 34). That notice of under seal submission informs Defendants that "Exhibits A-D have been submitted under seal," but does not identify the document to which the exhibits are appended. (ECF No. 34). No party responded to Plaintiff's motion to seal, likely because they did not receive it through the Court's electronic filing system.

1 In his motion to seal, Plaintiff explains that the exhibits are his and other inmates'  
2 declarations. He explains that the exhibits should be sealed to protect himself and the other  
3 inmates. Plaintiff asserts that the exhibits "might become a vehicle for causing harm to Plaintiff  
4 or others by Defendants or the population and therefore Plaintiff asserts compelling reasons to  
5 seal these documents."

6 Plaintiff has not described the specific harms that he believes may occur if the  
7 declarations are unsealed, and it is unclear if Defendants received Plaintiff's motion. Plaintiff did  
8 not describe why the declarations would place him and other inmates in harm's way. This leaves  
9 the Court without the ability to articulate the factual basis for its ruling if it were to grant  
10 Plaintiff's motion. *See Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1179 (9th Cir.  
11 2006) (explaining that, if the court decides to seal certain judicial records, it must base its  
12 decision on a compelling reason and articulate the factual basis for its ruling, without relying on  
13 hypothesis or conjecture). And even though the Court is obligated to liberally construe pro se  
14 filings, it cannot manufacture Plaintiff's arguments for him. *See Draper v. Rosario*, 836 F.3d  
15 1072, 1080 (9th Cir. 2016) (explaining that courts must liberally construe pro se pleadings); *see*  
16 *Indep. Towers of Washington v. Washington*, 350 F.3d 925, 929 (9th Cir. 2003) (explaining that  
17 the court cannot manufacture arguments for a party). So, the Court denies Plaintiff's motion to  
18 seal, but will keep the documents under seal for thirty days. Plaintiff will have thirty days to file  
19 a renewed motion to seal these documents. If Plaintiff does not file a renewed motion to seal  
20 these documents in thirty days, the Court will order the documents to be unsealed.

## 21 **II. Motion to extend discovery.**

22 Plaintiff moves to extend discovery deadlines, explaining that he has a dispute over  
23 discovery with Defendants and that Plaintiff requires the information that Defendants are  
24 withholding to amend his complaint. (ECF No. 35). Plaintiff adds that he needs additional time  
25 to complete discovery so that he can resolve his dispute with Defendants and additional time to  
26 file dispositive motions. So, Plaintiff requests a sixty-day extension of discovery deadlines.

27 Defendants oppose Plaintiff's motion. (ECF No. 40). Defendants assert that they have  
28 filed a motion for summary judgment and a motion to stay discovery and that, instead of

1 extending discovery, the Court should stay it. Defendants add that Plaintiff failed to comply with  
2 Local Rule 26-3 because he did not specify the discovery completed and specify the discovery  
3 that remains to be completed.

4 Plaintiff argues in reply that he has filed a motion to compel Defendants to respond to  
5 discovery and so, the Court should not stay discovery. (ECF No. 44). Plaintiff asserts that he did  
6 not yet have Defendants' discovery responses when he filed his motion to extend time. He also  
7 asserts that there is a genuine factual dispute regarding Defendants' motion for summary  
8 judgment and so, the Court should reject Defendants' reasoning for the stay. Plaintiff also asserts  
9 that he attempted to comply with Local Rule 26-3 in his motion to extend time and that the Court  
10 should liberally construe his motion to the extent he did not.

11 Under Federal Rule of Civil Procedure 16(b)(4), a schedule may be modified only for  
12 good cause and with the judge's consent. Under Local Rule 26-3 a motion to extend any date set  
13 by the discovery plan must show good cause (if filed before the deadlines it seeks to extend have  
14 expired). LR 26-3. That motion must include: (a) a statement specifying the discovery  
15 completed; (b) a specific description of the discovery that remains to be completed; (c) the  
16 reasons why the deadline was not satisfied or the remaining discovery was not completed within  
17 the time limits set by the discovery plan; and (d) a proposed schedule for completing all  
18 remaining discovery. LR 26-3.

19 Here, the Court finds that Plaintiff has shown good cause to extend the discovery  
20 deadlines in this case. Although Defendants assert that Plaintiff did not perfectly comply with  
21 Local Rule 26-3, Plaintiff did specify certain of the discovery that the parties had conducted and  
22 certain of the discovery that remains to be completed. The Court, liberally construing Plaintiff's  
23 motion, finds this to be sufficient. Additionally, Plaintiff has shown good cause for the extension  
24 by explaining that he has encountered a discovery dispute with Defendants that he seeks to  
25 resolve. While Defendants assert that discovery should be stayed, as outlined below, the Court  
26 does not agree. So, the Court grants Plaintiff's motion and he enters his proposed extended  
27 discovery dates with some modifications to correct certain deadlines and ensure that dates do not  
28 fall on weekends. *See* Fed. R. Civ. P. 6(a)(1)(C) (explaining that, if the last day of a time period

1 is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day  
2 that is not a Saturday, Sunday, or legal holiday).

3 **III. Motion to compel.**

4 Plaintiff moves to compel Defendants to respond to his discovery requests more  
5 thoroughly. (ECF No. 36). However, as Defendants point out in response, Plaintiff has not met  
6 his meet and confer obligations. (ECF No. 41). Plaintiff points out in reply that he is exempt  
7 from the face-to-face/telephonic/video conference requirements for meeting and conferring given  
8 his incarcerated status and points to a letter he sent to Defendants and a phone call he had with  
9 their counsel on January 28, 2025. (ECF No. 43). However, the exhibits he refers to as his letter  
10 are actually his requests for production and interrogatories, not a meet and confer letter. (ECF  
11 No. 26 at 11-18). Additionally, as Plaintiff himself points out, Defendants called him on January  
12 28, 2025, not to discuss their objections to Plaintiff's discovery requests, but to request additional  
13 time to respond. (ECF No. 36 at 2). Even if the parties did discuss some of the requests in that  
14 call, there is no indication that the call was a meet and confer. Moreover, Plaintiff seeks to  
15 compel Defendants to respond to his interrogatories, but as of the date of his motion, had not  
16 received Defendants' responses to those interrogatories given the fact that the parties agreed to  
17 extend Defendants' time to respond.

18 Plaintiff's motion to compel is governed by Federal Rule of Civil Procedure 37(a) and  
19 Nevada Local Rule 26-6. Before bringing a motion to compel, Federal Rule of Civil Procedure  
20 37(a)(1) and Local Rule 26-6(c) require the party bringing the motion to make a good faith effort  
21 to meet and confer with the other party to attempt and resolve the dispute without court action.  
22 Local Rule 26-6(c) explains:

23 Discovery motions will not be considered unless the movant (1) has  
24 made a good faith effort to meet and confer as defined in LR IA 1-  
25 3(f)<sup>1</sup> before filing the motion, and (2) includes a declaration setting

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26 <sup>1</sup> Local Rule IA 1-3(f) provides the following:

27 Meet and Confer. Whenever used in these rules, to "meet and  
28 confer" means to communicate directly and discuss in good faith the  
issues required under the particular rule or court order. This

1           forth the details and results of the meet and confer conference about  
2           each disputed discovery request.

3           Additionally, Local Rule 26-6(b) requires that all motions for protective order “must set  
4           forth in full the text of the discovery originally sought and any response to it.”

5           A meet and confer is thus a prerequisite to Plaintiff filing his motion to compel. Because  
6           it does not appear that the parties met and conferred, the Court denies Plaintiff’s motion.  
7           Additionally, Plaintiff does not include Defendants’ responses to his interrogatories in his motion  
8           because he had not yet received them from Defendants. So, the Court cannot decide Plaintiff’s  
9           motion to compel and denies it for this reason too.

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13           requirement is reciprocal and applies to all participants. Unless  
14           these rules or a court order provide otherwise, this requirement may  
15           only be satisfied through direct dialogue and discussion in a face-to-  
16           face meeting, telephone conference, or video conference. The  
          exchange of written, electronic, or voice-mail communications does  
          not satisfy this requirement.

17           (1) The requirement to meet and confer face-to-face or via  
18           telephonic or video conference does not apply in the case of an  
19           incarcerated individual appearing pro se, in which case the  
          meet-and-confer requirement may be satisfied through written  
          communication.

20           (2) A party who files a motion to which the meet-and-confer  
21           requirement applies must submit a declaration stating all meet-  
22           and-confer efforts, including the time, place, manner, and  
23           participants. The movant must certify that, despite a sincere  
          effort to resolve or narrow the dispute during the meet-and-  
          confer conference, the parties were unable to resolve or narrow  
          the dispute without court intervention.

24           (3) In addition to any sanction available under the Federal Rules of  
25           Civil Procedure, statutes, or case law, the court may impose  
26           appropriate sanctions under LR IA 11-8 for a party’s failure to  
          comply with the meet-and-confer requirement.

27           (4) Failure to make a good-faith effort to meet and confer before  
28           filing any motion to which the requirement applies may result  
          in denial of the motion.

1           **IV. Motion to stay discovery.**

2           Defendants move to stay discovery pending the Court’s decision on their motion for  
 3 summary judgment. (ECF No. 39). Defendants assert that a stay is warranted because their  
 4 motion for summary judgment is based on their assertion that Plaintiff did not exhaust his prison  
 5 grievances before bringing his claim and so, it is based on a preliminary issue that typically  
 6 warrants a stay. They add that they believe their motion for summary judgment will be successful  
 7 and that no further discovery is necessary to decide it because they have produced all of  
 8 Plaintiff’s administrative grievances filed between October 1, 2022, and February 16, 2025.  
 9 Plaintiff opposes the motion to stay discovery, asserting that he has opposed Defendants’ motion  
 10 for summary judgment and shown that there is a genuine issue of material fact regarding whether  
 11 he exhausted his prison grievances. (ECF No. 46). Defendants reply that Plaintiff has failed to  
 12 identify what discovery is necessary for the motion for summary judgment and assert that staying  
 13 discovery will promote the goals of Federal Rule of Civil Procedure 1 because they raise  
 14 exhaustion issues, which should be decided before they expend funds on discovery. (ECF No.  
 15 47).

16           Under the “preliminary peek” standard on which both parties rely,<sup>2</sup> courts may grant  
 17 motions to stay discovery when: (1) the pending motion is potentially dispositive; (2) the  
 18 potentially dispositive motion can be decided without additional discovery; and (3) the court has  
 19 taken a preliminary peek at the merits of the potentially dispositive motion to evaluate the  
 20 likelihood of dismissal.” *Kor Media Group, LLC v. Green*, 294 F.R.D. 579, 581 (D. Nev. 2013).  
 21 In addressing the preliminary peek standard, the *Kor Media Group* court explained:

22                   [C]ourts in this District have consistently held that “[a] stay of all  
 23 discovery should only be ordered if the court is ‘convinced’ that a  
 24 plaintiff will be unable to state a claim for relief.” *Tradebay[,]* [*LLC*  
*v. eBay, Inc.*], 278 F.R.D. [597,] 603 [(D. Nev. 2011)] (discussing

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25  
 26           <sup>2</sup> The undersigned magistrate judge does not employ the preliminary peek standard. Instead, the  
 27 undersigned employs the “good cause” standard as articulated in *Schrader v. Wynn*, No. 2:19-cv-  
 28 02159-JCM-BNW, 2021 WL 4810324 (D. Nev. Oct. 14, 2021). Nonetheless, because the parties  
 have briefed the preliminary peek standard and in the interest of resolving their dispute, the  
 undersigned employs that standard in deciding the parties’ dispute.

1 holdings of *Twin City Fire Ins. v. Employers of Wausau*, 124 F.R.D.  
 2 652 (D. Nev. 1989) and *Turner Broadcasting [Sys., Inc. v. Tracinda*  
 3 *Corp.]*, 175 F.R.D. 554 [(D. Nev. 1997)]; *see also Wood v. McEwen*,  
 4 644 F.2d 797, 801 (9th Cir. 1981). That standard is not easily met.  
 5 “Generally, there must be *no question* in the court’s mind that the  
 6 dispositive motion will prevail, and therefore, discovery is a waste  
 7 of effort. Absent extraordinary circumstances, litigation should not  
 8 be delayed simply because a non-frivolous motion has been filed.”  
 9 *Trzaska [v. Int’l Game Tech.]*, 2011 WL 1233298, at \*3, 2011 U.S.  
 10 Dist. Lexis 39275, at \*8 [(D. Nev. Mar. 29, 2011)] (emphasis in  
 11 original); *see also Tradebay*, 278 F.R.D. at 603 (“The fact that a  
 12 non-frivolous motion is pending is simply not enough to warrant a  
 13 blanket stay of all discovery.”). Thus, for example, “a stay might be  
 14 appropriate where the complaint was utterly frivolous, or filed  
 15 merely for settlement value.” *Turner Broadcasting*, 175 F.R.D. at  
 16 556.

17 *Kor Media Group.*, 294 F.R.D. at 583.

18 The Court denies Defendants’ motion for a stay. While the pending motion for summary  
 19 judgment is potentially dispositive and based on the preliminary issue of exhaustion, a stay is not  
 20 appropriate under the remaining preliminary peek factors. Defendants assert that the motion for  
 21 summary judgment can be decided without additional discovery. But Plaintiff points out in his  
 22 response to that motion that “discovery is ongoing and Plaintiff has requested statistics on 2098  
 23 notices over the last 24 months at HDSP, SDCC and LCC. Plaintiff has not received this request  
 24 and this information and documents is [sic] pertinent to his claim that Administrative remedies  
 25 have been unavailable to him while at HDSP.” (ECF No. 45 at 12). So, the Court does not find  
 26 that the second prong of the preliminary peek test weighs in Defendants’ favor. Additionally,  
 27 having taken a preliminary peek at the merits of the motion for summary judgment, and without  
 28 prejudging the outcome, the Court is not so convinced that Plaintiff will be unable to state a claim  
 for relief that a stay is appropriate.<sup>3</sup> So, the Court denies Defendants’ motion to stay discovery.

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<sup>3</sup> The Court does not further explain its reasoning because the assigned district judge may ultimately have a different view of the merits of the underlying motion. And the Court’s preliminary peek is not intended to prejudge the outcome. Instead, it is intended to evaluate the propriety of a stay with the goal of accomplishing the objectives of Rule 1. *See Davis v. Nevada*, No. 3:13-cv-00559-MMD-WGC, 2014 WL 1308347, at \* (D. Nev. Mar. 31, 2014).

1           **IT IS THEREFORE ORDERED** that Plaintiff's motion to seal (ECF No. 33) is **denied**.  
2       The Court will retain the documents filed at ECF No. 33 under seal until **April 28, 2025**. Plaintiff  
3       shall have until **April 28, 2025**, to file a renewed motion to seal these documents if he chooses. If  
4       Plaintiff does not file a renewed motion to seal by this date, the Court will order the documents  
5       unsealed.

6           **IT IS FURTHER ORDERED** that Plaintiff's motion to extend discovery deadlines (ECF  
7       No. 35) is **granted**. The following deadlines, which the Court corrects *sua sponte*, shall govern  
8       discovery:

10           Amend pleadings/add parties:	April 11, 2025
11           Close of discovery:	May 12, 2025
12           Discovery motions:	May 27, 2025
13           Dispositive motions:	June 9, 2025
14           Joint pretrial order:	July 10, 2025 <sup>4</sup>

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16           **IT IS FURTHER ORDERED** that Plaintiff's motion to compel (ECF No. 36) is **denied**.

17           **IT IS FURTHER ORDERED** that Defendants' motion to stay discovery (ECF No. 39) is  
18       **denied**.

19  
20           DATED: March 28, 2025



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23           DANIEL J. ALBREGTS  
24           UNITED STATES MAGISTRATE JUDGE

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26  
27           <sup>4</sup> Under Local Rule 26-1(b)(5), if dispositive motions are filed, the deadline for filing the joint  
28       pretrial order will be suspended until thirty days after decision on the dispositive motions or  
      further court order.